

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JODY LOMBARDO & BRYAN GILBERT,

PLAINTIFFS,

v.

Civil Action No. 4:16-CV-01637 NCC

**CITY OF ST. LOUIS, RONALD
BERGMANN, JOE STUCKEY, PAUL
WACTOR, MICHAEL COGNASSO, KYLE
MACK, ERICH VONNIDA, BRYAN
LEMONS, ZACHARY OPEL, JASON KING,
& ROLAND DeGREGORIO,**

DEFENDANTS.

**MOTION TO DISMISS BY DEFENDANTS RONALD BERGMANN, JOE STUCKEY, PAUL
WACTOR, MICHAEL COGNASSO, KYLE MACK, ERICH VONNIDA, BRYAN
LEMONS, ZACHARY OPEL, JASON KING, & ROLAND DeGREGORIO**

Defendants Ronald Bergmann, Joe Stuckey, Paul Wactor, Michael Cognasso, Kyle Mack, Erich Vonnida, Bryan Lemons, Zachary Opel, Jason King, and Roland Degregorio (“Defendants”) respectfully move the Court to dismiss Plaintiff Jody Lombardo’s and Plaintiff Bryan Gilbert’s (“Plaintiffs”) Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted. In support, Defendants state:

1. In fifteen of the twenty counts in their Complaint, Plaintiffs allege constitutional violations against Defendants arising out of their employment as police officers with the St. Louis Metropolitan Police Department, which is operated by Defendant City of St. Louis. *See generally* Complaint.
2. In one count in their Complaint, Plaintiffs allege that Defendants were negligent in violation of Missouri law.
3. The Court should dismiss Plaintiffs’ claims against Defendants in their individual capacities in Counts V, VII, IX, XI, XII, XIII, XV, XVI, XVII, and XVIII based on qualified immunity because Plaintiffs failed to plead sufficient facts demonstrating Defendants used

force that was not objectively reasonable under the circumstances. *Chambers v. Pennycook*, 641 F.3d 898, 905–06 (8th Cir. 2011).

4. The Court should dismiss Plaintiffs' claims against Defendants in their individual capacities in Counts VI, VIII, X, XIV, and XIX based on qualified immunity because Plaintiffs failed to plead sufficient facts demonstrating that Defendants were deliberately indifferent to a medical need. *Grayson v. Ross*, 454 F.3d 802, 808-09 (2006).

5. The Court should dismiss Plaintiffs' state-law claims against Defendants in Count XX because they are barred by official immunity. *Davis v. White*, 794 F.3d 1008, 1013 (8th Cir. 2015).

6. Defendants concurrently submit a Memorandum of Law of this motion which sets out the relevant arguments and citations to authority which support the relief Defendants request.

WHEREFORE, Defendants pray the Court grant their Motion to Dismiss for failure to state a claim, with prejudice, and for any other relief the Court deems fair and reasonable.

Respectfully submitted,
MICHAEL A. GARVIN,
CITY COUNSELOR

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CERTIFICATE OF SERVICE

I hereby certify this Entry was electronically filed with the Court for service by means of Notice of Electronic Filing upon all attorneys of record on December 21, 2016.

/s/ J. Brent Dulle